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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME ALVARADO,

Defendant and Appellant.

G048178

(Super. Ct. No. M14631)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed.

Jamie Popper, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

We appointed counsel to represent Jaime Alvarado on appeal. Counsel filed a brief that set forth the facts of the case. Counsel did not argue against his client but advised the court no issues were found to argue on his behalf. Pursuant to *Anders v. California* (1967) 386 U.S. 738, to assist the court with its independent review, counsel provided the court with information as to issues that might arguably support an appeal. Counsel raised three questions: (1) did the trial court err in concluding Alvarado did not qualify for sentencing recall under section Penal Code section 1170.126<sup>1</sup>; (2) can this court review the denial of claims other than those subject to a section 1170.126 petition; and (3) if this court can review the denial, did the trial court err in denying Alvarado's petition for writ of habeas corpus.

Alvarado was given 30 days to file written argument on his own behalf. Alvarado timely filed a letter with this court in response. In his letter, Alvarado raises a variety of issues. Alvarado first argues he qualifies for re-sentencing under section 1170.126, subdivision (e)(2)(A)(c)(ii). He also raises issues regarding the sufficiency of the evidence to support the gang enhancements and complains his sentence was unduly harsh for someone who had no prior serious felony convictions. Alvarado states he timely filed his notice of appeal and "stay injunction." Citing "[r]ule 2.202," he asserts petitioners denied habeas corpus relief have the right "to appeal their issues of convictions, sentences, and terms [and] new evidence such as the Three Strikes Reform Act of 2012." He indicates the same rights were afforded under former "[r]ule 60[.]" but he does not indicate where these rules originate from.

We have reviewed the information provided by counsel and Alvarado, and we have independently examined the record. We found no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) The judgment is affirmed.

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All further statutory references are to the Penal Code.

## FACTS

On December 20, 2002, a jury convicted Alvarado of one count of assault on a peace officer in violation of section 245, subdivision (d)(2) (count 1), one count of concealing stolen firearm in violation of 12025, subdivisions (a)(2), and (b)(2) (count 2), one count of actively participating in a criminal street gang in violation of section 186.22, subdivision (a) (count 4), and one count of resisting an executive officer in violation of section 69 (count 5). The jury also found true gang enhancements pursuant to section 186.22, subdivision (b)(1), and firearm enhancements pursuant to sections 12022.5, subdivision (a), and 12022.53, subdivision (b). On February 21, 2003, the trial court sentenced Alvarado to the middle term of seven years in prison on count 1, plus 10 years consecutive for the gang enhancement and an additional 10 years consecutive for the firearm enhancement, for a total prison term of 27 years. The court stayed the sentences on all other counts and enhancements. Alvarado filed a timely notice of appeal following his conviction. This court affirmed the judgment in its entirety. (*People v. Alvarado* (June 17, 2004, G032036) [nonpub. opn.] )

On February 5, 2013, Alvarado filed a petition for writ of habeas corpus and petition for modification of sentence under the “Three Strikes Reform Act of 2012” pursuant to section 1170.126 in the trial court. On February 25, 2013, the trial court denied both petitions. In its order denying the petitions, the court indicated five of the claims raised in the habeas corpus petition were untimely. The court noted Alvarado failed to adequately explain the “nearly [10] year delay in seeking post-conviction collateral review of his claims of error[,]” and addressed briefly the merits of the various claims. As to the petition to recall his sentence pursuant to section 1170.126, the court ruled Alvarado had not established he was entitled to a recall of his sentence under section 1170.126 because he is not serving an indeterminate sentence.

Alvarado filed a notice of appeal on March 18, 2013. The basis for his appeal is somewhat unclear as he essentially checked all the boxes on the form. He

completed the portion of the form reserved for appeals after the entry of a guilty plea or no contest or an admission of a probation violation. Alvarado indicated he is appealing based on the sentence and matters occurring after the plea and from the denial of a motion to suppress. Additionally, he challenges the validity of the plea or admission. Yet, these events do not exist in the record. Alvarado also indicates the basis for appeal is, “his right to file [a] habeas corpus petition based on new information [section] 1170.126[, subdivision] (e)(3) and [section] 1170.126[, subdivision] (e)(2)(A)(ii) imprisonment for state for 25 years or more.” (Original capitalization omitted.)

Alvarado checked all the boxes in the portion of the form reserved for all other appeals, indicating he is appealing after a jury or court trial and after a contested violation of probation. As an additional basis for his appeal, he writes: “Judge Prickett completely ignored transcripts on appeal.” (Original capitalization omitted.)

#### DISCUSSION

We first address Alvarado’s appeal from the denial of his petition for modification of sentence under the “Three Strikes Reform Act of 2012” pursuant to section 1170.126. Section 1170.126, subdivision (a), provides: “The resentencing provisions under this section and related statutes are intended to apply *exclusively* to persons presently serving an *indeterminate* term of imprisonment pursuant to paragraph (2) of subdivision (e) of [s]ection 667 or paragraph (2) of subdivision (c) of [s]ection 1170.12, whose sentence under this act would not have been an indeterminate life sentence.” (Italics added.) Because Alvarado is serving a determinate sentence, the court did not err in concluding Alvarado did not qualify for sentencing recall under section 1170.126.

Counsel questions whether this court can review the denial of claims other than those subject to the section 1170.126 petition. We interpret other claims to mean the denial of the writ of habeas corpus. The answer is no. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn.7 [no appeal lies from denial of habeas petition, and prisoner whose habeas

petition has been denied by superior court can obtain review of claims only by filing new habeas petition in court of appeal].)

We next address the issues raised in Alvarado's letter. Initially, Alvarado seeks to appeal from his request for resentencing. We agree Alvarado may appeal from the court's denial of his request for resentencing and that, as to this issue, his appeal was timely filed. For the same reasons stated above, we reject Alvarado's contention he is entitled to relief under section 1170.126.

Alvarado also contends he may appeal from the trial court's denial of his petition for writ of habeas corpus. Relying on "[r]ule 2.202," he contends a petitioner denied habeas corpus relief has the right "to appeal their issues of convictions, sentences, and terms [and] new evidence such as the Three Strikes Reform Act of 2012." He indicates the same rights were afforded under former "[r]ule 60." We assume he is referring to the California Rules of Court. We note former California Rules of Court, rule 60 is now California Rules of Court, rule 8.380. Although this new rule relates to habeas corpus petitions, it does not support the premise for which Alvarado cites it. For reasons previously discussed, Alvarado does not have a right to appeal from the trial court's denial of his writ of habeas corpus.

As to Alvarado's claims of insufficiency of the evidence and sentencing choices, we reject those claims as they would need to be presented to this court in a new petition for writ of habeas corpus as previously explained.

Next, Alvarado advises this court he is untrained in the law and requests this court "help [him] out." He then complains about the length of his sentence and advises this court the Orange County Superior Court has "major problems in both the court and appellate system." Alvarado cites no authority for this court to afford him the assistance he has requested, and we have found no such authority.

Lastly, Alvarado requests conflict counsel be appointed so that he can be represented by competent and effective assistance of counsel. A criminal defendant has

the right to timely seek substitution of appointed counsel based upon a showing of inadequate representation or an irreconcilable conflict. (*People v. Marsden* (1970) 2 Cal.3d 118, 123-124.) Alvarado has failed to show either ineffective representation or a conflict. Accordingly his request for new counsel is denied.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.